

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RICHARD GIUNTA, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

POWER SOLUTIONS INTERNATIONAL,  
INC., et al.,

Defendants.

No. 1:16-cv-08253

Consolidated with

Case No. 1:16-cv-9599

Judge: Honorable Virginia M. Kendall

**DEFENDANTS' JOINT MOTION TO DISMISS**  
**AMENDED CLASS ACTION COMPLAINT**

Defendants Power Solutions International, Inc. (“PSI” or the “Company”), Gary S. Winemaster (“Winemaster”), Jay J. Hansen (“Hansen”), Ellen R. Hoffing (“Hoffing”), Kenneth Landini (“Landini”), and Mary E. Vogt (“Vogt” and, collectively with Winemaster, Hansen, Hoffing and Landini, the “Individual Defendants”)) (collectively, “Defendants”), respectfully move this Court to dismiss Plaintiffs’ Amended Class Action Complaint (the “Amended Complaint”) pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. In support thereof, Defendants submit the accompanying Memorandum of Law in Support of Joint Motion to Dismiss Amended Class Action Complaint, the exhibits thereto, and the Declaration of Rebecca L. Dandy and supporting exhibits attached thereto.

Plaintiffs' Amended Complaint, brought on behalf of a putative class of individuals who purchased PSI stock between February 24, 2014 and February 2, 2017 (the "Class Period"), attempts to allege that Defendants were engaged in a fraudulent "pull-forward" or "channel stuffing" revenue recognition scheme and, as a result, made false and misleading statements and/or failed to disclose material information in its publicly filed financial statements, annual and quarterly reports, press releases and earnings calls in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Section 10(b)") and Rule 10b-5 promulgated thereunder ("Rule 10b-5").

However, the Amended Complaint relies almost entirely on unsubstantiated allegations lifted wholesale from another complaint filed against PSI by Eric Cohen ("Cohen"), PSI's former Chief Operating Officer ("COO"). Indeed, a comparison of the Cohen complaint and Plaintiffs' Amended Complaint reveals that *at least* 45 of the substantive paragraphs of Cohen's complaint are either quoted verbatim in the Amended Complaint or paraphrased—almost all of which relate to the purported "channel stuffing" scheme. Plaintiffs cannot meet their pleading burden by relying upon contested allegations taken from a complaint filed in another action. This is particularly true where, as here, Plaintiffs claim that Cohen, himself, engaged in some of the purported misrepresentations at issue.

Plaintiffs attempt to bolster the contested allegations from Cohen's complaint with the hearsay accounts of four Confidential Witnesses ("CWs"). Only one of the CWs, however, was employed by PSI during the entire three-year Class Period, and none of the CWs has any relevant first-hand knowledge of PSI's accounting or what any of the Individual Defendants knew at the time of the alleged misstatements. Accordingly, statements attributed to these CWs are, at best, based on conjecture and innuendo insufficient to support a claim under Section 10(b)

of the Securities Exchange Act of 1934 (“Section 10(b)”) and Rule 10b-5 promulgated thereunder (“Rule 10b-5”).

Plaintiffs’ claims also fail because Plaintiffs have not sufficiently alleged the existence of any improper channel stuffing practices. Mere allegations that sales have been pulled forward are not sufficient to state a Rule 10b-5 claim. Indeed, courts have routinely held that there is nothing inherently wrong with the types of transactions in which Defendants are alleged to have engaged.

Plaintiffs likewise fail to plead particular facts giving rise to a strong inference of scienter against any of the Individual Defendants. Rather, Plaintiffs improperly rely on group pleading and attempt to string together a host of deficient assertions in the hope that this Court will somehow ignore their individual insufficiencies. Even when considered collectively, however, the allegations do not raise a strong inference that any of the Defendants acted with scienter with regard to any of the alleged misstatements. Nor do Plaintiffs plead that any Individual Defendant had motive to commit fraud. Indeed, none of the Individual Defendants is alleged to have sold PSI stock during the Class Period. This stands in stark contrast to the substantial sale proceeds—*more than \$9 million*—that Cohen received from stock sales during the Class Period, a fact that Plaintiffs fail to mention anywhere in the Amended Complaint.

Plaintiffs further contend that certain Defendants made false and misleading statements regarding PSI’s acquisition of Power Professional Products, Inc. (“3PI”). Plaintiffs allege that Defendants touted the benefits of the 3PI acquisition and falsely represented the value and financial strength of 3PI. Contrary to Plaintiffs’ conclusory allegations, however, many of the statements regarding the 3PI acquisition were puffery and therefore are incapable of forming the basis of a securities fraud claim. PSI’s statements regarding 3PI also were not misleading in

light of other statements in the subject disclosures. Plaintiffs similarly fail to allege any particularized facts as to any Defendant that would lead to a strong inference of scienter for the alleged misstatements relating to 3PI.

Statements relating to PSI's guidance and expectations for 3PI also were forward-looking and accompanied by meaningful cautionary language, the disclosure of which Plaintiffs conveniently ignore. The statements therefore are protected under the Private Securities Litigation Reform Act's ("PSLRA") safe harbor provisions.

For the reasons stated above and elaborated below, the majority of the "facts" alleged in the Amended Complaint should not properly be considered by this Court. Even if all of Plaintiffs' vague and unsupported allegations are taken into account, however, the Amended Complaint neither properly alleges violations of the securities' laws nor sufficiently shows that Defendants had the required knowledge that violations were occurring. Plaintiffs' claims should thus be dismissed.

Finally, without a primary violation of Section 10(b) or Rule 10b-5, Plaintiffs' claim under Section 20(a) of the Exchange Act must also be dismissed.

WHEREFORE, for the reasons set forth above and more fully set forth in Defendants' Memorandum of Law, Defendants respectfully request that this Court dismiss the Amended Class Action Complaint filed by Plaintiffs in the above-captioned case.

Dated: November 17, 2017

GARY S. WINEMASTER

By: /s/ Sean M. Berkowitz

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**CERTIFICATE OF SERVICE**

The hereby certify that I electronically filed the foregoing **Defendants' Joint Motion to Dismiss Amended Class Action Complaint and the accompanying Memorandum of Law in Support of Joint Motion to Dismiss Amended Class Action Complaint, the exhibits thereto, and the Declaration of Rebecca L. Dandy and supporting exhibits attached thereto** with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the following

On November 17, 2017.

s/Rebecca L. Dandy

*Guinta v. Power Solutions International, Inc.*, Case No. 1:16-cv-08253

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